



**UNITED STATES DEPARTMENT OF COMMERCE**  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/442,756    11/18/99    BEUTH    R    9350-0144-0

IM22/1108

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EXAMINER

HON, S

ART UNIT

PAPER NUMBER

1772

DATE MAILED:

11/08/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/442,756

Applicant(s)

BEUTH ET AL.

Examiner

Sow-Fun Hon

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☒ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☒ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear whether the term "whose at least interior wall" means wherein at least the interior wall.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-10, 13, 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Yu (US Patent 5,256,460). Yu has a polymeric blend and a fuel hose (pipe) made of this blend (column 1, lines 6-8). The blend comprises a polyamide and a polyolefin with functional groups selected from the group consisting of carboxyl groups, esters, anhydrides and carboxylates. The carbon atom number of the carboxylic acid is preferably not lower than 10. The polyolefin is preferably 5 to 15 % of ethylene ethyl acrylate with respect to the total weight of the whole blend (column 1, lines 35-68) and 0.1 to 30 weight % of maleic anhydride functionalized

Art Unit: 1772

ethylene-propylene. The blend also preferably comprises 0.1 to 0 % nylon 6 and 0.1 to 40 % nylon 12 (column 2, lines 4-23).

Yu teaches that plasticizers cannot be used because they are extracted by gasoline which is a very good solvent of plasticizers (column 1, lines 22-24), and therefore teaches the importance of the minimization of gasoline extractables. In the absence of valid comparative scientific data, the examiner has taken the position that the composition blend taught by Yu has the same physical properties claimed by Applicant.

5. Applicant is reminded that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siour et al. (EP 0731,308A1) in view of Yu. Yu has been discussed above.

Art Unit: 1772

Siour et al. have a multilayer gasoline tube (pipe) which comprises of an inner layer of polyamide blended with polyolefin (abstract). The tube can be used for filling and feeding the tanks of automobiles (column 2, lines 1-5). One of ordinary skill in the art would have known that these tubes are corrugated in certain areas or throughout.


It would have been obvious to one of ordinary skill in the art to have used the blend of Yu in the multilayer tubing of Siour to obtain an improved corrugated pipe that has the desired resistance to components present in gasoline and the lack of contamination to the transported components of gasoline.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (703)308-3265. The examiner can normally be reached Monday to Friday from 9:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ellis Robinson, can be reached on (703)308-2364. The fax phone number for the organization where this application or proceeding is assigned is (703)305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

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RENA L. DYE  
PRIMARY EXAMINER  
TC 1700